No. 58823-1-I

81324-8

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT PETITION OF:

MARK MATTSON,

Petitioner.

REPLY BRIEF OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Supreme Court

Statutes

Other Authorities

A. ARGUMENT

RCW 9.94A.728 requires the Department of Corrections (DOC) to determine an inmate's eligibility for release to community custody based upon an individualized assessment of the merits of the release plan submitted by the inmate. In re the Personal Restraint Petition of Dutcher, 114 Wn.App. 755, 758, 60 P.3d 635 (2002); In re the Personal Restraint Petition of Liptrap, 127 Wn.App. 463, 469, 111 P.3d 1227 (2005).

> The legislature has required the department to make its early release decision based upon plans proposed by inmates and reviewed by the department, and has (we believe wisely) not authorized any exemption from this process simply because (End of Sentence Review Committee] believes the offender qualifies for a civil commitment hearing.

Dutcher, 114 Wn.App. at 765-66 (quoted in Liptrap, 127 Wn.App. at 472).

Based upon its policy that it will not approve any plan submitted by inmates who have had evaluations finding they meet the criteria to be found a sexually violent predator, DOC has refused Mark Mattson's proposed release plans, and stated "No community release plan will be safe enough." Indeed, DOC policy 350.200 provides:

> For those cases in which a forensic evaluation has been completed and an expert has concluded that the offender does meet the criteria for civil commitment as defined RCW 71.09.020, no proposed community release plan will be deemed sufficiently safe to ensure community protection.

Response of DOC, Exhibit 5, p.2.

DOC maintains the fiction that it has complied with the requirements of RCW 9.94A.728 because DOC "investigated" all Mr. Mattson's proposed addresses prior to denying his release. Response at 4-5. But this claimed "investigation" is a farce, and does nothing more than give lip service to this Court's rulings in Liptrap and Dutcher, as DOC policy 350.200 makes clear that under no circumstances will the plan be approved.

Despite the plain language of RCW 9.94A.728 and the holdings of Liptrap and Dutcher that DOC cannot craft exceptions to the requirement of an individualized assessment, DOC acknowledges that it has done so and brazenly contends "DOC was absolutely correct when it excluded offenders . . . like Mr. Mattson." Response at 6. Liptrap concluded:

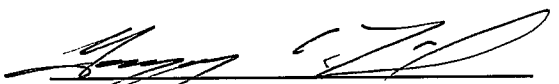
> If there is to be extended confinement for sex offenders based on their risk of reoffense, it must be accomplished within the constraints of due process, such as the initiation of a civil commitment proceeding.

127 Wn.App. at 463. DOC's continued refusal to make individualized assessments of release plans is contrary to RCW 9.94A.728. Mr. Mattson is unlawfully restrained and is entitled to relief.

B. CONCLUSION

For the reasons set forth above and in his prior briefing, this Court should grant Mr. Mattson's petition and instruct DOC to consider his release plan based upon its merits rather than policy 350.200.

Respectfully submitted this 11th day of April, 2007.



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IN RE THE PERSONAL RESTRAINT PETITION OF MARK MATTSON PETITIONER, v. STATE OF WASHINGTON, RESPONDENT.	)	COA NO. 58823-1-I

DECLARATION OF SERVICE

I, MARIA RILEY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

ON THE 11TH DAY OF APRIL, 2007, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF PETITIONER** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] KING COUNTY PROSECUTING ATTORNEY
APPELLATE DIVISION
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STATE OF WASHINGTON
2007 APR 11 PM 4:53

SIGNED IN SEATTLE, WASHINGTON THIS 11TH DAY OF APRIL, 2007.

X_____